(13)

HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Sunil Kumar Sinha, JJ.

Criminal Appeal No. 87 of 2000

Budhram @ Munudhiya

Versus

The State of Chhattisgarh

JUDGMENT

Judgment for consideration

Sd/-
SUNIL KUMAR SINHA
Judge

Hon'ble Shri Justice L.C. Bhadoo, J

I agree

Sd/-
L.C.BHADOO
Judge

1 .08.2007

Post for Judgment: 2 .08.2007

Sd/-
Sunil Kumar Sinha
Judge

1 .08.2007

(14)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 87 of 2000

APPELLANT — Budhram @ Munudhiya S/o Sukhiram Dhobi, aged 40 years, R/o. Village Sonpuri, P.S. Balco Nagar, District- Korba (C.G.)

Versus

RESPONDENT — The State of Chhattisgarh, through Police Station- Balco Nagar, District- Korba (C.G.)

Appearance:-

Shri Rajesh Tiwari, counsel for the appellant.
Shri Satish Gupta, Dy. Govt. Advocate for the State.

(DIVISION BENCH)

HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

JUDGMENT
(02.08.2007)

Following judgment of the Court was delivered by

Sunil Kumar Sinha, J.

(1) The challenge is made to the judgment of conviction and order of sentence dated 30th November, 2000 passed by the Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bilaspur in Special Criminal Case No. 28/2000, whereby, the appellant was convicted under Section 302 of I.P.C. and sentenced to undergo imprisonment for life.

(2) The appellant was charged for the commission of offence punishable under Section 302 I.P.C. and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (hereinafter referred to as the Special Act). The allegations are that on 25.4.2000 at about 12 in the mid-night, he committed murder of Karam Singh.

(3) The case of the prosecution is that on account of certain previous animosity, the deceased had gone to the house of the appellant and had assaulted him on his back, on which, the appellant chased him and when he found him in the *Gali*, in front of house of Prem Sai, he attacked him with *Tangia* and caused multiple injuries, on which, the deceased died instantaneously. After the occurrence, immediately, the appellant firstly went to the house of Sarpanch namely- Kawal Singh Rathia (P.W.-3), where he made extra judicial confession and thereafter, he made such confession before many witnesses and ultimately, the report was lodged.

(4) During the course of investigation, notices were given to the witness for inquest under Ex.-P/1. The inquest on the body of the deceased was prepared under Ex.-P/2. Site plan was prepared under Ex.-P/3. Plain soil, blood stained soil, blood stained Axe, blood stained *Danda*, a bow and an arrow were seized from the place of occurrence near the body of the deceased under Ex.P/4. The cloths of the deceased as also the appellant were also seized. Dehati Nalishi was recorded under Ex.-P/15, based on which, the F.I.R. was recorded under Ex.-P/9. The merg intimation was also recorded under Ex.P/16. The body of the deceased was sent for post-mortem to 100 beds hospital, Korba under requisition Ex.-P/20. The post-mortem was conducted by Dr. R.K. Divya (P.W.-20), who prepared his report under Ex.-P/21, according to which, the cause of death was shock due to massive hemorrhage as a result of injury of vital organs of left side of neck. He opined that the death was

homicidal. In the post-mortem, he noticed the following injuries:-

1. Incised wound over left cheek in size of 4 cm. x 1 ½ cm. x muscle deep, transversely placed, head of wound was towards chin and tail was towards angle of mandible.

2. Incised wound over left side of neck in size of 5 cm. x 2 cm. x bone deep, obliquely placed in middle part, head of wound was towards upper medial part and tail was towards lower lateral part.

3. Incised wounds over left zygomatic region - (i) size 5 cm. x 3 cm., obliquely placed, bone was cut (ii) size 4 cm. x 3 cm. x bone deep, mandible bone was cut, obliquely placed lateral to 1st wound, reaching towards lateral part.

All the injuries were ante mortem in nature.

In further investigation, the statements of witnesses were recorded and the seized articles were sent for chemical examination and the report Ex.-P/22 was received, according to which, blood stains were found on the iron blade of the Axe, clothes of the deceased (*Loongi, Baniyan* & underwear) and the clothes of the appellant (*loongi* & *sweter*). No blood stains were found on the plain soil. However, it was found on blood stained soil. After completion of usual investigation, the charge-sheet was filed.

(5) On trial, the Special Court convicted the appellant under Section 302 I.P.C. However, he was acquitted of the charges framed under Section 3 (2) (v) of the Special Act.

(6) The conviction of the appellant is mainly based upon extra judicial confession made to many witnesses supported by medical evidence as also seizure of various articles etc.

(7) Learned counsel for the appellant argued that the evidence of extra judicial confession does not appear to be reliable. He also argued that P.W.-3, Kawal Singh Rathia has stated that he had seen the injury on the back of the appellant but in fact, no injury was found on his back, therefore, he is unreliable and his evidence regarding extra judicial confession of the appellant should be disbelieved.

(8) On the other hand, learned counsel for the State opposed these arguments and supported the judgment of conviction and order sentence passed by the trial Court. He submitted that there are many witnesses of extra judicial confession, therefore, even if the evidence of P.W.-3, Kawal Singh Rathia is disbelieved, conviction, on the basis of other witnesses of extra judicial confession can well be sustained.

(9) So far as the law on the point of extra judicial confession is concerned, it is well settled that if the evidence to this effect is given by a truthful witness who appears to be unbiased, not even remotely inimical to accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, words spoken are clear, and unmistakably that the accused is the offender and nothing is omitted by the witness which may militate against it, after subjecting the evidence to rigorous test on the touchstone of credibility, if it passed the test, it can be accepted and can be the basis for conviction.

(10) In the present case, if we look into the evidence, P.W.-1, Bandhan Singh has deposed that on the fateful night Prem Sai, Suknath, Bisaou and Puraan came to his house. They stated that a dead body is lying in front of house of Prem Sai. Thereafter, he along with Prem Sai, Suknath, Bisaou and Puraan went to the house of Panch namely- Sukh Singh and when they all were

sitting in the *Gali*, near his house, the appellant came from the side of his house and he himself stated that when he was sleeping in his house, the deceased came there and assaulted him with *Tangia*, thereafter he chased the deceased and when he caught him in the *Gali* in front of house of Prem Sai, he also assaulted him with *Tangia*.

(11) Ratan Das Mahant (P.W.-2) has also deposed that the appellant had visited him wearing blood stained clothes and had confessed before him that he had murdered the deceased by *Tangia* in front of the house of Prem Sai. He further deposed that he went to the place of occurrence and saw the body of the deceased having many injuries on it.

(12) Kawal Singh Rathia (P.W.-3) has also deposed that on the fateful night, when he was sleeping in the house, the appellant came there and made confession that he has murdered the deceased by causing injury by *Tangia*. He had gone to the place of occurrence and had seen the dead body lying there. He has said in one line that there was some injury on the back of the appellant due to which his clothes were also blood stained. It is on this statement, the counsel for the appellant has argued that this witness (P.W.-3) does not appear to be reliable as in fact, no injury was there on the back of the appellant as has been stated by this witness. The Court below, in appreciation said that this witness might not have seen injuries but on the basis of wearing blood stained clothes and further on the basis of statement made by the appellant before him, he might have deposed like this. The other witness, P.W.-9 Prem Sai has also deposed about the extra judicial confession made by the appellant.

(13) If we appreciate the evidence of these witnesses, firstly, even after discarding the evidence of P.W.-3 Kawal Singh Rathia,

the remaining evidence of extra judicial confession is writ large on record. When hue and cry was made in the village in the night itself at about 12, the villagers had gathered in mass at the place of occurrence and the appellant was also there, who made confession to many of them, among whom some have been examined by the prosecution. The evidence of these witnesses appear to be reliable, it has not been brought on record that even they were remotely inimical to the appellant or they were having some motive for attributing an untruthful statement to the appellant and nothing adverse has been brought on record against these witnesses. The evidence of these witnesses, appears to be trustworthy and acceptable.

(14) So far as the story setforth by the appellant that firstly, the deceased had gone to his house and had assaulted him on his back with *Tangia* and then only, he chased him and assaulted in the *Gali*, the trial Court has discarded this story saying that firstly nothing was brought on record to show that the appellant has also received injury. Even in his arrest memo Ex.-P/14, there is no mention about such injury on the back of the appellant. Rather, there is mention about one injury on the lower portion of the right leg. Moreover, if we look into the statement of accused/appellant recorded under Section 313 *Cr.P.C.*, it would appear that when the appellant was faced with the evidence regarding his statement to the witnesses that firstly the decease had gone to his house and has caused injury on his back and then, he chased him and assaulted him in front of the house of Prem Sai, vide questions No. 15 & 18, he totally denied about it and has simply said that these are false statements. That is to say that explanation or story setforth by the appellant regarding firstly causing injury to him by the deceased does not find support from any material on record. Therefore, the only material which remains is the prompt extra

judicial confession, according to which, he assaulted the deceased with *Tangia*, who died instantaneously. The finding of the Court below is based upon cogent, reliable and trustworthy evidence regarding prompt extra judicial confession made by the appellant. There appears to be no illegality in the judgment of conviction and order of sentence passed by the trial Court.

(15) There is no substance in the appeal, the same deserves to be dismissed and is accordingly, dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

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